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April 21, 2016
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA
IN SUPREME COURT

ADM10-8049

ORDER REGARDING PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

The Minnesota Supreme Court Advisory Committee on the Rules of Criminal Procedure has recommended additional amendments to the Minnesota Rules of Criminal Procedure to further facilitate the judicial branch's electronic filing, service, and distribution of case materials. The Committee's report with the proposed amendments to the Rules of Criminal Procedure is attached to this order. The Committee's report and summaries of its 2014 meetings can also be accessed on P-MACS, the public access site for the Minnesota appellate courts, under case number ADM10-8049 *Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure* (filed Mar. 30, 2016). The court will consider the proposed amendments to the Minnesota Rules of Criminal Procedure after receiving and considering written comments.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or opposition to the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than June 20, 2016.

Dated: April 21, 2016

BY THE COURT:

Lorie S. Gildea
Chief Justice

FILED
March 30, 2016
OFFICE OF
APPELLATE COURTS

REPORT AND PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CRIMINAL PROCEDURE

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

ADM10-8049

March 30, 2016

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I. INTRODUCTION

As directed by the Supreme Court, the Committee met to discuss whether additional amendments to the rules were needed to accommodate the transition to a more universal electronic court environment, including electronic filing and service, electronic records, electronic integration services between the court and government subscribers and other related electronic initiatives. As a result of the discussion, and in support of this transition, the Committee recommends additional amendments to the rules.

II. PROPOSED AMENDMENTS TO SUPPORT E-COURT

A. eCharging and eCitation. The Committee discussed whether any changes were needed to Rule 1.06, which governs the electronic filing of charging documents. The Committee proposes that the reference to the pilot counties be eliminated, and that the penalty of perjury option be referenced in this rule, consistent with the reference in Rule 2.01, subd. 1, which specifies the requirements for the contents of the complaint. The Committee also recommends an amendment to Rule 1.06 to clarify that refusal to utilize the electronic charging functionality available (eCharging and eCitation) does not constitute unavailability under the rule.

The Committee also discussed whether the biometric signature requirement for law enforcement officers should be eliminated from Rule 1.06. The biometric signature requirement was part of the original eCharging design and has been a rule requirement since the promulgation of Rule 1.06 in support of the eCharging pilot in 2008. Only law enforcement officers are required to sign using biometric identification, which is a fingerprint. Prosecutors and judges may sign using a password. Maintenance and technical support of fingerprint readers has been a challenge and it is anticipated that more challenges will arise when search warrant functionality is added within eCharging and officers will be submitting applications from various locations at all hours of the day and night. There is a concern that the potential for a breakdown or unavailability of a fingerprint reader will be a barrier to the transition to an all-electronic search warrant process within eCharging. The committee agrees that a fingerprint should not be required for law enforcement signing within eCharging and recommends removing that requirement from Rule 1.06.

The Committee also recommends an amendment to Rule 1.06 to recognize the alternative methods that exist currently for electronic signatures to be applied to a complaint. The original and still current eCharging rule assumes that if someone has to print a draft complaint because of an eCharging malfunction, all subsequent signatures must be pen to paper. However, many prosecutor offices, law enforcement agencies, and the Judicial Branch now have e-signature tools so even if someone has to take a complaint out of eCharging, the individual could still apply an e-signature to a PDF

version of the complaint. The document would still need to be filed on paper, however, as there is no electronic filing alternative to eCharging for criminal complaints.

As the court moves toward all-electronic criminal case filing, the Committee has continued its discussion of the move toward the elimination of tab charges as a charging document. There is no statewide electronic filing option for tab charges and there is no plan to create one as the data required would be the same as the data required for an eCitation. Rules changes proposed in 2014, and promulgated in 2015, clarified that a defendant can be cited and detained; this was to encourage more reliance on citations and begin the phasing out of tab charges. An additional step toward that goal is proposed to eliminate tab charges as an option in Rule 4.02, subd. 2, when a defendant is arrested, charged, and released. This is consistent with Rule 6.01, subd. 1(a), (b). The Committee understands that statewide the reliance on tab charges for in-custody defendants may remain an issue for a while, although effective July 1, 2016, the use of tab charges should mostly be eliminated by the e-filing mandate.

The Committee also reviewed the amended complaint filing requirements in Rules 15.07 and 15.08. Amended complaints cannot be electronically filed with the court via eCharging. The Committee discussed whether the complaints referenced in 15.07 and 15.08 are needed now that there is a statewide case management system, MNCIS, where charge amendments are recorded. The Committee also questioned whether transcription is needed in light of the data captured in the MNCIS. In practice, these after-the-fact complaints are rarely filed promptly, and it is unclear what the purpose of the complaints is as court staff would already need to have the amended charge statute on the date of the plea and sentence in order to update MNCIS. Having the amended charge information for entry into MNCIS on the date of the plea is more critical to case processing than an amended complaint filed on paper after the fact. The Committee recommends eliminating the amended complaint and transcript requirements in Rules 15.07 and 15.08 and instead relying on the amendment made on the record and entered in MNCIS.

B. References to "no record" of the proceedings. Consistent with the amendments in 2015 to Rule 4.02, subd. 5(3), the Committee recommends additional amendments to Rule 4.02, subd. 5(2) and (3), to eliminate the requirement that "no record" be made of certain proceedings and that certain complaints must "not be filed." Depending on how some cases are initiated, it may be that a MNCIS record has already been created based on the filing of a citation or tab charge so even if a complaint is not timely filed under Rule 4.02, it is not true that "no record" is made of the proceedings. Similarly, if a complaint is filed outside of the time allowed in the rule, court administration must accept the complaint for filing, even if a judge later determines the complaint was untimely filed and the case should be dismissed. Based on the existence of electronic case records that cannot and should not be deleted, the Committee recommends that the requirements to make "no record" and that a complaint "not be filed" be deleted from the rules.

C. Clarification of access to certain documents filed with the court. Pre-release investigation reports, also known as bail evaluations or bail studies, are filed with the court and currently classified as confidential in the same manner as presentence investigation reports (PSIs) under the Rules of Public Access to Records of the Judicial Branch. However, Rule 6.02, subd. 3, does not address access to pre-release investigation reports. The Committee proposes amending Rule 6.02, subd. 3, to conform to the rule governing access to PSIs (Minn. R. Crim. P. 27.03, subd. 1(B)(5)).

Rule 9.03, subd. 6, is currently not clear regarding whether the motion for in camera proceedings must at any point be sealed. The rule requires that the "entire record of the motion" be sealed but only if the court orders a hearing in camera. The way the rule works in practice is that a party files a motion, which is presumptively public in a criminal case, and only proceedings occurring after the hearing is ordered are sealed. Sealing the motion after it has been publicly accessible for a time does not seem logical or what the rule intended. The Committee recommends amending the rule to provide that all motions and records relating to in camera proceedings are sealed, regardless of whether a hearing is or is not ordered.

D. Electronic search warrant procedures. The Committee reviewed existing Rule 33.05, which currently addresses the electronic transmission of documents. It is unclear what Rule 33.05 was intended to address; Rule 33.05 is not a filing rule as the rest of Rule 33 is, and Rule 33.05 authorizes transmission, but it is not clear to whom. The Committee discussed whether Rule 33.05(a) should be amended to recognize electronic transmission, or can be eliminated entirely. Because the concept of requiring originals has almost entirely been eliminated from the Rules of Criminal Procedure, facsimile transmission of any order or warrant would likely be a non-issue under current law and practices, and facsimile is mostly an outdated technology.

Additionally, the Committee discussed whether specific requirements may need to be added to Rule 33.05(b) governing the electronic search warrant process, including any electronic signature requirements, the option for written affidavits under oath (thus invoking Minn. Stat. § 358.15), and the recognition of statements under penalty of perjury pursuant to Minn. Stat. § 358.116. The Committee agrees that the best approach is to move the electronic search warrant process to a new Rule 37, comparable to the rule governing warrants on oral testimony, Rule 36. As noted above, the electronic search warrant process is not a filing rule so the concept does not fit well in Rule 33, and there are always questions about what the document-based search warrant process requires. Up until now, that process has only been addressed in statute (ch. 626) and case law. Creating a separate document-based search warrant rule will help clarify the requirements of a written application as well as the electronic procedures that may be used in conjunction with the request for and issuance of a search warrant.

Additionally, as directed by the Supreme Court Order issued on January 20, 2016, addressing electronic search warrant procedures, provisions from that Order are incorporated into the new proposed Rule 37. The Order specifically referenced electronic mail; however, there are other rules that reference electronic transmission and do not specify electronic mail. The Committee is concerned that including the reference to electronic mail in this rule may imply that the use of electronic mail is not authorized in other rules. For that reason, the reference is not included in proposed Rule 37.

E. Miscellaneous amendments. In light of the proposed amendment removing the complaint requirements in Rule 15.08, the cross-reference to that rule is recommended to be deleted from Rule 2.01, subd. 1. In reviewing that rule, the Committee also noted that there is no basis for the cross-reference to Rule 11.08 and recommends deletion of that as well.

The Committee is also deleting the second-to-last paragraph in the comments to Rule 15.10. The first sentence is redundant to the requirement already stated in rule, the reference to tab charging is not consistent with the move toward statewide eCharging and eCitation, and the facsimile reference is outdated. This entire comment is no longer needed or helpful given statewide MNCIS access to charging documents.

The Committee discussed the requirements of Rule 33.03 that court staff must make a record of the transmission of orders to the parties. Traditionally court staff have transmitted orders to the parties without retaining specific "proof" that transmission was made to each party (e.g., copies of the documents sent, photocopies of the envelopes, etc.). Questions have been raised regarding what exactly must be entered in MNCIS to document that transmission occurred to all parties. The Committee recommends amending Rule 33.03 to clarify that court staff must document that transmission occurred but need not make a record of each transmission. Finally, the Committee recommends eliminating a reference to paper from Rule 34.04.

III. OTHER DISCUSSION

The Committee discussed other questions raised since the 2015 amendments took effect. The Committee discussed questions regarding the correct procedures under Rule 4.03, which requires a probable cause determination within 48 hours. For those cases where a complaint is filed, there are no concerns; the questions arise when the document used to make the determination is not a complaint, but rather Criminal Rules Appendix Form 44 or a similar local document. Specifically, the Committee discussed: 1) whether that document should be filed with the court at all; 2) if yes, whether the document should result in the creation of a criminal case in MNCIS or should be filed in an administrative file; and 3) if filed in an administrative file, whether the document should be publicly accessible. The Committee agrees that although the rule does not specifically state that the probable cause document should not result in the filing of a criminal case,

amendments to the rule are not necessary because Form 44 and similar documents are not included within the definition of charging document and therefore should not result in the creation of a criminal case. The Committee agrees that to the extent this is occurring anywhere in the state, this is a training issue. The Committee also agrees that the rule does not require Form 44 or any similar document to be filed with the court, but if the document is filed with the court, it should be filed in an administrative file. Finally, the Committee agrees that the document is publicly accessible as there is no legal basis or rationale for preventing public access to this information.

The Committee also discussed questions that have been raised regarding the intent of the 2015 amendment to Rule 27.03, subd. 1(B)(5), governing the presentence investigation report (PSI). The PSI rule was amended in response to a proposal from the Committee that intended to clarify that the entire PSI should be electronically available to the parties, and that there should be no separation into confidential and non-confidential sections. Since then, questions have been raised as to whether the PSI provided to the parties can contain victim impact statements and psychosexual evaluation reports, or whether those must be submitted to the judge separately. The Committee agrees that no further amendment to the rule is needed and that it should be clear that any documents ordinarily considered part of the PSI are covered by the rule, can and should be incorporated into the PSI and provided to the parties, and should not be submitted separately. Again the Committee agrees that to the extent this is still occurring anywhere in the state this is a training issue.

Respectfully Submitted,

ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

PROPOSED AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE

The Supreme Court Advisory Committee on Rules of Criminal Procedure recommends that the following amendments be made in the Minnesota Rules of Criminal Procedure. In the proposed amendments, deletions are indicated by a line drawn through the words and additions by a line drawn under the words.

1. Amend Rule 1.06 as follows:

Rule 1.06. Use of Electronic Filing for Charging Documents

Subd. 1. Definition of E-Filing. "E-filing" for purposes of this rule means the electronic transmission of the charging document to the court administrator by means authorized by the State Court Administrator.

Subd. 2. Authorization. ~~E-filing may be used to file with the court administrator in a criminal case any charging document. Effective July 1, 2015, in Cass, Clay, Cook, Dakota, Faribault, Hennepin, Kandiyohi, Lake, Morrison, Ramsey, and Washington Counties, e-filing must be used to file all complaints. Effective July 1, 2016, e-filing~~E-filing must be used to file all citations, tab charges, and complaints ~~statewide~~.

Subd. 3. Signatures.

(1) How Made. ~~If the charging document is e-filed, all~~ All signatures required under these rules must be affixed electronically, unless~~. If~~ the e-filing technology is unavailable~~, any individual required to sign the charging document may print the charging document and affix a manual signature~~. If the document must be~~is~~ printed and manually signed, ~~all subsequent signatures must be affixed manually, and the~~ a printed copy must be filed with the court.

(2) Signature Standard. Electronic signatures ~~affixed by law enforcement officers serving as the complainant must be authenticated using biometric identification. Other electronic signatures~~ may be affixed by any electronic means.

(3) Effect of Electronic Signature. A printed copy of a charging document showing that an electronic signature was properly affixed under paragraph (2) prior to the printout is prima facie evidence of the authenticity of the electronic signature.

Subd. 4. Electronic Notarization. If the probable cause statement in an e-filed complaint is made under oath before a notary public, it must be electronically

notarized in accordance with state law. The probable cause statement may be signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116.

Subd. 5. Paper Submission. E-filed charging documents are in lieu of paper submissions. An e-filed charging document should not be transmitted to the court administrator by any other means. Paper submission is authorized in lieu of e-filing where the electronic means authorized by the State Court Administrator are unavailable to the submitting agency. The refusal to purchase the needed equipment or utilize the electronic means authorized by the State Court Administration does not constitute unavailability.

2. Amend the Comment to Rule 1, paragraph 7, as follows:

It is anticipated that if a complaint is commenced electronically, and the technology becomes unavailable due to a system failure, any actor in the chain (e.g., prosecutor or judge) may need to print the complaint and proceed by filing a hard copy. If paper filing occurs, Rule 1.06, subd. 3, clarifies that any signatures affixed electronically and shown on the hard copy complaint are valid ~~so long as the signatures were affixed in compliance with the electronic signature standard under paragraph (2)~~. It is also anticipated that certain complaints and citations, including complaints filed by a prosecutor from a county other than the county of venue in a conflict case and complaints and ~~charged~~citations filed by agencies without a federal Originating Agency Identification (ORI) number, must be filed on paper for the foreseeable future because the current e-filing system does not support electronic filing of those documents. The current e-filing system used for filing charging documents also does not support the creation and filing of an indictment; however, if a criminal case has already been initiated by the filing of a complaint, an indictment may be filed into that case by the prosecutor using the E-Filing ~~s~~System defined in Minnesota General Rules of Practice 14.

3. Amend Rule 2.01 as follows:

Rule 2.01. Contents; Before Whom Made

Subd. 1. Contents. The complaint is a written signed statement of the facts establishing probable cause to believe that the charged offense has been committed and that the defendant committed it, except as modified by Rule~~s~~ 6.01, subd. 4~~, 11.08, and 15.08~~. The probable cause statement can be supplemented by supporting affidavits, statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn witness testimony taken by the issuing judge. The complaint must specify the offense charged, the statute allegedly violated, and the maximum penalty. The complaint must also conform to the requirements in Rule 17.02.

Subd. 2. Before Whom Made. The probable cause statement must be made under oath before a judge, court administrator, or notary public, ~~except as otherwise provided in Rules 11.08 and 15.08,~~ or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. If sworn witness testimony is taken under subdivision 3, the oath must be administered by a judge, but the oath may be administered by telephone, ITV, or similar device.

Subd. 3. Witness Testimony; How Made. If the court takes sworn witness testimony, the court must note that fact on the complaint. The testimony must be recorded by a reporter or recording instrument and must be transcribed and filed.

Subd. 4. Probable Cause Determination. The judge must determine whether probable cause exists to believe an offense has been committed and the defendant committed it. When the alleged offense is punishable by a fine only, the probable cause determination can be made by the court administrator if authorized by court order.

4. Amend the first paragraph of the Comment to Rule 2 as follows:

Rule 2.01 notes an exceptions to the probable cause requirement in the complaint. Rule 6.01, subd. 4 permits probable cause to be contained in a separate attachment to the citation. Rules 11.08 and 15.08, which authorize the substitution of a new complaint to permit a plea to a misdemeanor or different offense, do not require a showing of probable cause.

5. Amend Rule 4.02, subd. 2, as follows:

Subd. 2. Citation or Tab Charge. The arresting officer or the officer's superior may issue a citation ~~or tab charge~~ and release the arrested person, and must release the arrested person if ordered by the prosecutor or by a judge of the district court where the alleged offense occurred. The arresting officer or the officer's superior may issue a citation or tab charge and continue to detain the arrested person if any of the circumstances in Rule 6.01, subd. 1(a)(1)-(3) exist.

6. Amend Rule 4.02, subd. 5(2) and (3) as follows:

(2) Complaint Filed; Order of Detention; Felonies and Gross Misdemeanors Not Charged as Designated Gross Misdemeanors Under Rule 1.04(b). A complaint must be presented to the judge before the appearance under Rule 4.02, subd. 5(1). The complaint must be filed promptly, except as provided by Rule 33.04, and an order for detention of the defendant may be issued, provided: (1) the complaint contains the written approval of the prosecutor or the certificate of the judge as

provided by Rule 2.02; and (2) the judge determines from the facts presented in writing in or with the complaint, and any supporting documents or supplemental sworn testimony, that probable cause exists to believe that an offense has been committed and that defendant committed it. Otherwise, the defendant must be released~~, the complaint and any supporting documents must not be filed, and no record made of the proceedings~~.

(3) Complaint, Tab Charge, or Citation; Misdemeanors; Designated Gross Misdemeanors. If no complaint is filed by the time of the defendant's first appearance in court as required by this rule for a misdemeanor charge or a gross misdemeanor charge for offenses designated under Rule 1.04(b), a citation or tab charge must be filed. However, in a misdemeanor case, if the judge orders, or if requested by the person charged or defense counsel, a complaint must be filed.

In a designated gross misdemeanor case commenced by a tab charge or citation, the complaint must be served and filed within 48 hours of the defendant's appearance if the defendant is in custody, or within 10 days of the appearance if the defendant is not in custody, provided that the complaint must be served and filed before the court accepts a guilty plea to any designated gross misdemeanor. Service of a gross misdemeanor complaint must be as provided by Rule 33.02.

In a misdemeanor case, the complaint must be filed within 48 hours after demand if the defendant is in custody, or within 30 days of the demand if the defendant is not in custody.

If no complaint is filed within the time required by this rule, the defendant must be discharged~~, and the complaint and any supporting documents must not be filed~~.

A complaint is valid when it: (1) complies with the requirements of Rule 2; and (2) the judge has determined from the complaint and any supporting documents or supplemental sworn testimony that probable cause exists to believe that an offense has been committed and that the defendant committed it.

Upon the filing of a valid complaint in a misdemeanor case, the defendant must be arraigned. When a charge has been dismissed for failure to file a valid complaint, and the prosecutor later files a valid complaint, a warrant must not be issued on that complaint unless a summons has been issued first and either could not be served, or, if served, the defendant failed to appear in response.

7. Amend Rule 6.02, subd. 3, as follows:

Subd. 3. Pre-Release Investigation. To determine conditions of release, the court may investigate the defendant's background before or at the defendant's court appearance. The investigation may be conducted by probation services or by any other qualified agency as directed by the court. The court, or the agency at the court's direction, must forward any pre-release investigation report to the parties. The pre-release investigation report must not be disclosed to the public without a court order.

Information obtained in the pre-release investigation from the defendant in response to an inquiry during the investigation and any derivative evidence must not be used against the defendant at trial. Evidence obtained by independent investigation may be used.

8. Amend Rule 9.03, subd. 6, as follows:

Subd. 6. In Camera Proceedings. On any party's motion, with notice to the other parties, the court for good cause may order a discovery motion to be made in camera. A record must be made. ~~If the court orders an in camera hearing, the~~The entire record of the motion must be sealed and preserved in the court's records, and be available to reviewing courts. Any materials submitted to the court for in camera review must be submitted in accordance with Rule 14.06 of the General Rules of Practice for the District Courts.

9. Amend Rule 15.07 as follows:

Rule 15.07. Plea to Lesser Offenses

With the prosecutor's consent and the court's approval, the defendant may plead guilty to a lesser included offense or to an offense of lesser degree. On the defendant's motion and after hearing, the court, without the prosecutor's consent, may accept a guilty plea to a lesser included offense or to an offense of lesser degree, provided the court is satisfied that the prosecutor cannot introduce sufficient evidence to justify the submission of the offense charged to the jury or that it would be a manifest injustice not to accept the plea. In either event, the plea may be entered without amendment of the charging document. However, ~~in felony cases, if the indictment or complaint is not amended,~~ the reduction of the charge to an included offense or an offense of lesser degree must be done on the record. ~~If done only on the record, the proceedings must be transcribed and filed.~~

10. Amend Rule 15.08 as follows:

Rule 15.08. Plea to Different Offense

With the consent of the prosecutor and the defendant, the defendant may enter a guilty plea to a different offense than that charged in the original charging document. ~~If the different offense is a felony or gross misdemeanor, a new complaint must be signed by the prosecutor and filed in the district court. The complaint must be in the form prescribed by Rule 2.01 except that it need not be made upon oath, and the facts establishing probable cause to believe the defendant committed the offense charged need not be provided. If the different offense is a misdemeanor, the~~ The defendant may be charged with the new offense by complaint, or on the record, and the original charge must be dismissed.

11. Delete the 13th paragraph of the Comments to Rule 15 as follows:

~~*Before proceeding under Rule 15.10, the prosecutor in the jurisdiction having venue must charge the defendant. This may be done by complaint or indictment or, for misdemeanors, by tab charge. The charging document may be transmitted to the jurisdiction where the plea is to be entered by facsimile transmission under Rule 33.05.*~~

12. Amend Rule 33.03 as follows:

Rule 33.03. Notice of Orders

Upon entry of an order, the court administrator must promptly transmit a copy to each party and ~~must make a record of~~ document the transmission. The court administrator may provide a copy by electronic means as authorized or required by Rule 14 of the Minnesota General Rules of Practice. The transmissions of the order constitutes the notice of its entry. As long as the order transmitted indicates the date the order was entered, the order need not be accompanied by a separate notice of entry. Lack of notice of entry by the court administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, unless these rules direct otherwise.

13. Amend Rule 33.05 as follows:

Rule 33.05. ~~Facsimile or~~ Electronic Transmission

~~(a) Facsimile Transmission.~~ Complaints, orders, summons, warrants, and supporting documents–including orders and warrants issued under Minnesota Statutes, Chapter 626A–may be sent via ~~facsimile~~electronic transmission. A

complaint, order, summons, or warrant signed electronically or sent by electronic transmission is valid and enforceable.

~~A facsimile order or warrant issued by the court is valid and enforceable.~~

~~**(b) Electronic Transmission.** Search warrants and supporting documents including orders and warrants issued under Minnesota Statutes, Chapter 626A, may be sent and signed electronically under a method approved by the State Court Administrator. Any search warrant signed electronically under a method approved by the State Court Administrator is valid and enforceable.~~

14. Delete the second paragraph of the Comment to Rule 33 as follows:

~~*Search warrants may be requested by affidavit or by oral testimony, and may be obtained in person and signed on paper, exchanged by facsimile and signed on paper, or exchanged and signed electronically under a method approved by the State Court Administrator. The rules do not require a warrant to be obtained in a particular manner. With the number of variations in how a warrant may be requested, how the documents may be transmitted, and how the signature may be applied, there is no longer what was traditionally considered an "original" warrant in many circumstances. Regardless of the method by which the warrant was obtained, if the warrant was requested and signed under one of the approved processes, the warrant is valid and enforceable.*~~

15. Amend Rule 34.04 as follows:

Rule 34.04. Additional Time After Service by Mail or Electronic Service Late in the Day

When a party is served with a notice or other ~~paper~~document by mail, three days must be added to the time the party has the right, or is required, to act. If service is made by electronic means and accomplished after 5:00 p.m. Minnesota time on the day of service, one additional day must be added to the time the party has the right, or is required, to act.

16. Add a new Rule 37 as follows:

RULE 37. SEARCH WARRANTS ON WRITTEN APPLICATION

Rule 37.01. General Rule

Search warrant applications must be supported by a written affidavit signed under oath, a signed statement attested to under oath, or by a written statement

signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. The judge to whom a search warrant application is submitted has the discretion not to administer an oath to the applicant if the affidavit in support of the search-warrant application was signed under oath and notarized by a notarial officer pursuant to Minnesota Statutes Chapter 358, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116.

Rule 37.02. Electronic Transmission and Signature

Search warrant applications, including requests for orders under Minnesota Statutes, Chapter 626A, search warrants, and orders may be signed and transmitted electronically. A search warrant or order signed electronically or sent by electronic means is valid and enforceable.

If the judge administers an oath via telephone, radio, or similar means of communication, and the applicant does no more than attest to the contents of a signed statement that was transmitted electronically, a verbatim recording of the oath and attestation is not required. The judge must note on the warrant that the person submitting the application was duly sworn and by what means of communication. If any oral testimony is to be taken in support of the application, the judge must proceed as required by Rule 36.

17. Add a Comment to Rule 37 as follows:

Search warrants may be requested by a written affidavit signed under oath, a signed statement attested to under oath, a written statement signed under penalty of perjury, or by sworn oral testimony, and may be obtained in person and signed on paper, exchanged electronically and signed on paper, or exchanged and signed electronically. The rules do not require a warrant to be obtained in a particular manner. With the number of variations in how a warrant may be requested, how the documents may be transmitted, and how the signature may be applied, there is no longer what was traditionally considered an "original" warrant in many circumstances. Regardless of the method by which the warrant was obtained, if the warrant was requested and signed under one of the approved processes, the warrant is valid and enforceable.